RECENT CASES

CARRIERS—LOSS OF BAGGAGE—LIMITATION OF LIABILITY.—HARRIS V. SOUTHERN RY. CO., 85 S. E. (S. S.) 158.—The Interstate Commerce Commission requires notices of rates and charges filed with it by the railroads to be placed in the stations. *Held,* although no such notice was posted by the defendant, an interstate passenger checking a trunk without specifying its value can recover no more than the amount limited in the schedule in case of its destruction.

As early as 1838, it was held by the Supreme Court of New York that a common carrier could not excuse himself from liability by public notice. *Hollister v. Nowlen,* 19 Wend. (N. Y.) 234; *Cole v. Goodwin,* id. 251. But a common carrier could at common law limit his liability by express contract. *Swindler v. Hilliard,* 2 Rich. (S. C.) 286; *Bernard v. Adams Ex. Co.,* 205 Mass. 254. Acceptance of a ticket or bill of lading containing a limitation provision, has been held to constitute assent to the limitation by the passenger or shipper accepting the same. *Carr v. Tex. & Pac. Ry.,* 194 U. S. 427; *Schaller v. Chicago & N. W. Ry.,* 97 Wis. 31. Some states, however, require the actual consent of the shipper or passenger to the limitation. *Black v. Atlantic Coast Line,* 82 S. C. 478; *Plaff v. Pac. Express Co.,* 251 Ill. 243. The more recent decisions show that if a railroad has filed rates and charges with the Interstate Commerce Commission, there need be no actual knowledge or assent by the passenger to limit the carrier's liability. *L. & N. Ry. v. Miller,* 156 Ky. 677; *Barstow v. N. Y., N. H. & H.,* 143 N. Y. S. 983; *Boston & Maine v. Hooker,* 233 U. S. 97 (Pitney *dissenting*). The holding in the principal case goes further than the latter cases, in that it allows the limitation of liability even though the defendant had not posted schedules in its stations as required by the Interstate Commerce Commission.

S. H. S.

CONSTITUTIONAL LAW—14TH AMENDMENT—POLICE POWERS—SEGREGATION ORDINANCE.—HARRIS V. CITY OF LOUISVILLE, 177 S. W. (KY.) 472.—*Held,* an ordinance which provided for the segregation of races in the city of Louisville, and which contained a clause providing that nothing therein should affect present vested rights, was a valid exercise of the police powers, and not contrary to the 14th amendment of the Constitution of the United States.

The preservation of public health and safety is often made in express terms a matter of municipal duty. *1 Dillon, Municipal Corporations,* §144. The State may give to the municipal corporation the general power to pass ordinances in regard to public welfare. *Pool v. Trexler,* 76 N. C. 297. §2783 of the Ky. Statutes provides that "the General Council shall have power to pass, for the government of the city, any ordinance not in conflict with the constitution of the U. S., the constitution of Ky. and the statutes thereof." In *Munn v. Illinois,* 94 S. 113, Mr. Chief Justice Waite, in referring to police powers, said, "Under these powers the government regulates the conduct of its citizens, one toward another, and the manner in which each shall use his own property when such regulation becomes

necessary for the public good." Rights of property, like all other social and conventional rights, are subject to such reasonable limitations, restraints, and regulations, established by law, as the legislature may think necessary and expedient. *Commonwealth v. Alger,* 7 Cush. (Mass.) 53; *Deems v. Mayor,* 80 Md. 164; *Barbier v. Connolly,* 113 U. S. 27. Quarantine ordinances and ordinances for the segregation of prostitutes have been held constitutional. *Smith v. St. Louis & S. W. R. R. Co.,* 181 U. S. 248; *L'Hote v. New Orleans,* 177 U. S. 587. Legislation preventing intermarriage between the two races, and providing for separate compartments in railroad coaches, and establishing separate schools for whites and blacks, has been universally held valid. *State v. Gibson,* 36 Ind. 389; *Plessey v. Ferguson,* 163 U. S. 537; *Berea College v. Commonwealth,* 123 Ky. 209. An ordinance similar to the one in the principal case was held valid in the case of *Ashland v. Coleman* in the Circuit Court of Hanover County, Va. In the following cases segregation ordinances were declared unconstitutional, but the ordinances passed upon are distinguishable from the one in the principal case. *State v. Gurry,* 121 Md. 534; *State v. Darnell,* 166 N. C. 300; *Carey v. Atlanta,* 84 S. E. (Ga.) 456.

S. H. S.

DAMAGES—PERMANENT OR TEMPORARY INJURIES—FLOODED LAND—MEASURE OF RECOVERY.—THOMPSON V. ILLINOIS CENTRAL R. CO., 153 N. W. (IOWA) 174.—In case of an overflow of land due to the faulty location of a railroad bridge, *held,* that damages should have been confined to the lowlands physically sustaining the injury and not extended to the depreciation in value of the farm as a whole.

It is well settled in the case of permanent structures that the measure of damages is the difference between the value of the land before and after the injury. *Sanitary Dist. of Chicago v. Herkert,* 108 Ill. App. 582. Whether a particular injury is permanent or temporary is a much controverted point. See *Flouring Mill Co. v. Lake Shore R. Co.,* 160 Mich. 330. Sometimes the question is made to depend upon the intention with which the structure was erected (*Strange v. Railroad,* 245 Ill. 246), or the right to be maintained. *Railroad v. Horan,* 131 Ill. 288; *Strout v. Railroad,* 157 Ky. 1. A permanent structure is defined sometimes as one of such a character that unless interfered with by the hand of man it will continue indefinitely. *Gartner v. Railroad,* 71 Neb. 444. Again, the question has been determined with reference to the ease or difficulty of removal. *Baker v. Allen,* 66 Ark. 271. Under any of these tests the structure in the principal case should be regarded as permanent. Where the convenience and salability of an entire farm are permanently affected by the flooding of a part, the damage to the entire farm should be recovered. *Hastings v. Railroad,* 148 Iowa 390; *Parrott v. Railroad,* 127 Iowa 424; *Reichert v. Bachenstross,* 71 Hun (N. Y.) 546; *Rourke v. Mass. Electric Co.,* 177 Mass. 46. On the other hand, the damage has been regarded as temporary owing to the temporary character of the immediate injury, notwithstanding the liability of indefinite recurrence thereof on account of the permanency of the structure. *Jones v. Sanitary Dist. of Chicago,* 252 Ill. 591; *Sloss-Sheffield Steel & Iron Co. v. Mitchell,* 61 So. (Ala.) 934. In viewing the authorities one is led to form the opinion that the courts in assessing damages consider the damage to the